



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

MAR - 5 2013

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Docket No. TSCA-SP-2013-003

Richard Rawson
33 Scenic Drive
Worcester, MA 01602

RE: SUBPOENA under TSCA Section 11(c), 15 U.S.C. § 2610(c)

Dear Mr. Rawson:

The Environmental Protection Agency (EPA), Region 1, is issuing this subpoena to You to determine compliance with laws and regulations requiring: (a) disclosure of Lead-Based Paint information upon the sale or lease of residential properties constructed before 1978, and (b) lead-safe renovation of residential and child-occupied facilities and residential properties constructed before 1978. The laws in question are Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852; Section 406(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2686(b); and Section 402(c) of TSCA, 15 U.S.C. § 2682(c). The regulations implementing these laws are the Real Estate Notification and Disclosure Rule, codified at 40 C.F.R. § 745, Subpart F (Disclosure Rule) and the Renovation, Repair and Painting Rule, codified at 40 C.F.R. § 745, Subpart E. On July 9, 2010, EPA approved state regulations to implement the Residential Property Renovation requirements, which are found at 454 Code of Massachusetts Regulations (CMR) 22.00; the state regulations operate in lieu of the federal regulations.

A violation of the Disclosure Rule is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, which can result in civil penalties under Section 16 of TSCA of up to \$16,000 per violation. Violations of the Renovation, Repair and Painting Rule are prohibited under Section 409 of TSCA, which can result in civil penalties of up to \$37,500 per violation.

This subpoena is issued to You under the authority of Section 11(c) of TSCA, 15 U.S.C. § 2610(c). In carrying out its duties under TSCA, EPA may require by subpoena the attendance and testimony of witnesses, the production of reports, papers and documents, answers to questions, and other information the EPA deems necessary. **Your failure or refusal to fully and truthfully submit the information required by this subpoena may subject You to further action to enforce this subpoena in federal court. In addition, the failure or refusal to submit the information required in this subpoena may subject You to civil and/or criminal penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.** The issuance of this document does not preclude the issuance of further subpoenas relating to this matter to You or other parties.

For your convenience, we are also enclosing a package of information to assist in your compliance with these rules.

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

I. DEFINITIONS

The following terms shall be defined as specified below. **Please read these definitions carefully to properly comply with the terms of this subpoena.** Unless otherwise defined, the terms used in this subpoena have the meaning given in 40 C.F.R. Part 745, Subpart F, and 454 CMR 22.00.

"Abatement" means any measure or set of measures designed to permanently eliminate Lead-Based Paint hazards, as specified in 40 C.F.R. § 745.223. In Massachusetts, the term "Deleading Project or Work" is used instead and is defined at 454 CMR 22.02.

"Agent" means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing Target Housing. This term does not apply to the purchaser but may apply to a purchaser's agent unless the Agent receives all compensation from the purchaser, as specified in 40 C.F.R. § 745.103.

"Child-Occupied Facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-Occupied Facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-Occupied Facilities may be located in Target Housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain Child-Occupied Facilities, the Child-Occupied Facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition with respect to exteriors of public or commercial buildings that contain Child-Occupied Facilities, the Child-Occupied Facility encompasses only the exterior sides of the building that are immediately adjacent to the Child-Occupied Facility or the common areas routinely used by children under age 6.

"Disclosure Form" means certification and acknowledgment regarding the disclosure of information pertaining to Lead-Based Paint and/or Lead-Based Paint hazards as required by 40 C.F.R. § 745.113.

"Document" means the original or an identical and readable copy thereof, and all non-identical copies (whether different from the original by reason of notation made on such copies or otherwise), of any writings or records of any type or description, however created, produced or reproduced.

"Due Diligence" means, in this context, the collection and analysis of data that a reasonable person would take before buying a property to ascertain whether the property has any environmental conditions that could affect the transaction.

"Elevated blood lead levels" means concentrations greater than 5 ug/dL in children under age 17.

"Emergency Renovation Operations" means Renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

"Evaluation" means a Risk Assessment and/or Inspection.

"Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

"Inspection" means (1) a surface-by-surface investigation to determine the presence of Lead-Based Paint as provided in section 302 (c) of the Lead-Based Paint Poisoning and Prevention Act (42 U.S.C. § 4822), and (2) the provision of a report explaining the results of the investigation.

"Lead-Based Paint" means paint or other surface coating which contains lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

"Lease" means a written or oral rental agreement for any period of time.

"Lessee" means any entity that enters into an agreement to lease, rent or sublease Target Housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes and non-profit organizations.

"Lessor" means any entity that offers Target Housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and non-profit organizations.

"Minor Repair and Maintenance activities" are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface area for exterior activities, where no prohibited or restricted work practice (see definition below) is used and where the work does not involve window replacement or demolition of painted surfaces. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"New England" means the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

"Occupant" means the lessee and any other person who resides in the Target Housing.

"Purchaser" means an entity that enters into an agreement to purchase an interest in Target Housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and non-profit organizations.

"Renovation"¹ means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an "abatement" as defined by 40 C.F.R. § 745.223² (or in Massachusetts as part of a "deleading project" as defined by 454 CMR 22.0). The term renovation includes (but is not limited to):

- Removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, and surface preparation activity, such as sanding, scraping, or other such activities that may generate paint dust);
- Removal of building components (e.g., walls, ceilings, plumbing, windows);
- Weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping); and
- Interim controls that disturb painted surfaces.

A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation. The term renovation does not include "minor repair and maintenance activities." (See definition above.)

"Risk Assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of Lead-Based Paint hazards in residential dwellings, including: information gathering regarding the age and history of the housing and occupancy by children; visual inspection; limited wipe sampling or other environmental sampling techniques; other activity as may be appropriate; and provision of a report explaining the results of the investigation.

"Target Housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing), and except any 0 bedroom dwelling. For the purpose of the subpoena, "housing constructed before 1978" means housing for which a construction permit was obtained (or if no permit was obtained, housing in which construction was started) before January 1, 1978.

¹ In Massachusetts, the corollary is "renovation project or work," defined in 454 CMR 22.02 as "the renovation, repair or painting of any unit of Target Housing or Child-occupied Facility, or portion thereof, which results in or may result in the disturbance of lead paint or lead paint debris but which is distinguished from a deleading project or by one of the following conditions:

- (a) The work is carried out in or on a structure which is required to be delead by M.G.L. c. 111, § 197 but is unrelated to deleading compliance, both in terms of purpose and effect.
- (b) The work is carried out in or on a structure which is not required to be delead pursuant to M.G.L. c. 111, § 197, and the purpose of the work is other than the achievement of a Letter of Compliance pursuant to 105 CMR 460.760(D). The term does not include minor repair and maintenance activities, as defined in 454 CMR 22.00."

² 40 C.F.R. § 745.223 defines abatement as "any measure or set of measures designed to permanently eliminate lead-based paint hazards."

"Work Order" means any oral agreement, written document, or electronic communication used by property management, building management, or owners to request any work to be completed by employees or contractors including maintenance services, emergency repairs, quick work projects, and standing work for compensation by employer.

"You" and "Your" means (a) Richard Rawson; (b) any entity or venture in which Richard Rawson maintains an interest; and (c) agents or representatives of Richard Rawson or associated entities or ventures.

II. INFORMATION TO BE SUBMITTED TO THE EPA

Please provide the information requested below **within 30 days of receipt of this subpoena**. Your response must be accompanied by the attached affidavit, notarized and signed and dated. Where information necessary for a complete response is neither in Your possession nor reasonably available to You, indicate this fact in Your response and (1) explain the reasonable efforts You made to obtain such information, and (2) if possible, identify any source that either possesses or is likely to possess such information. Please send all responsive information to:

Ronnie Levin
U.S. Environmental Protection Agency - New England
Office of Environmental Stewardship
5 Post Office Square, Suite 100 (OES 05-4)
Boston, MA.02109-3912

A. List of Residential Properties that You Own or Manage:

1. Provide a list of all residential properties, complexes, developments, etc. (henceforth "property") that You own/have owned or manage/have managed from **November 1, 2011 to the present**.
2. For each property identified in question A.1, identify whether it is Target Housing, and identify how many units are in each property.
3. For each Target Housing property identified in question A.2, provide contact information for both the property owner(s) and the property manager(s), including name, title, address, and phone number. Explain the relationship between You and any other business entity listed.
4. For each Target Housing property identified in question A.2 and located in New England, describe all public rental and/or rehabilitation assistance received. Indicate the program name, if known, including but not limited to:
 - a. Project-based rental assistance from a federal agency (HUD or other);
 - b. HUD multi-family mortgage insurance (FHA);
 - c. HUD-owned multifamily property;
 - d. Rehabilitation assistance from city, county, or state (for example, CDBG or HOME);
 - e. Public housing;

- f. Tenant-based rental assistance (such as Housing Choice Voucher Program); and/or
 - g. Any other public or private grant funds for Lead-Based Paint hazard control.
- 5. For each Target Housing property identified in question A.2 and located in New England, identify which units have children residing in them and provide the ages of the children, including date of birth.

B. Management Company:

If You listed any management company in response to question A.3, above, describe the nature of the management company's duties and provide a copy of the contract with the management company.

C. Information on Lease Transactions:

- 1. Provide the *total number* of Target Housing leases executed by You in New England from **November 1, 2011 to the present**.
- 2. Provide the following *information for all lease transactions* that occurred from **June 1, 2012 to the present**.

For each unit leased, provide the following:

- a. A copy of the rental agreement, lease or lease extension;
- b. A copy of the Disclosure Form required by 40 C.F.R. § 745.113 and any attachments thereto;
- c. For each rental agreement, lease or lease extension, indicate whether there were children residing in the unit, and if so, their ages at the time of the agreement (or date of birth); and
- d. Copies of Lead-Based Paint information, **regardless of the date** of such information, including:
 - i. Any Inspection and/or Risk Assessment for Lead-Based Paint performed at the property (including, for multi-family buildings, any report regarding Lead-Based Paint in common areas of the building);
 - ii. Any communication from state or local agencies pertaining to Lead-Based Paint or Lead-Based Paint hazards in the property, including Inspection Reports, Abatement Orders, Notices of Compliance, Releases of Orders, Vacancy Orders, etc.; and
 - iii. Due Diligence or financial records, in which the environmental conditions of the property were described.
- e. If no written records exist regarding a rental agreement or lease transaction (e.g., if there is no written lease), provide a rent roll or list of tenant names/phone numbers, and for each tenant:
 - i. Identify the address and rental unit the tenant leased;
 - ii. Identify the date the tenant became obligated to lease the unit;

- iii. Indicate whether children resided in the unit, and if so, their ages at the time of the lease transaction (or date of birth); and
- iv. Provide copies of any documents which discuss the information referred to in questions C.2.b and C.2.d, above, pertaining to the tenant's unit.

D. Sale of Target Housing:

1. Provide a list of all Target Housing that You sold in New England from **November 1, 2011 to the present**.
2. For each transaction, provide a copy of the **offer to purchase contract** and the purchase and sales document, including the Disclosure Form and all available records and reports pertaining to Lead-Based Paint and/or Lead-Based Paint hazards.

E. Missing Disclosure Forms:

If, in response to questions C and D, You produced any sales or lease transactions without Disclosure Forms, explain:

1. Why the form is missing; and
2. Whether, how, and when You complied with each substantive requirement of 40 C.F.R. § 745.113(b) (for example, the requirements to provide a pamphlet, provide information on the presence of known Lead-Based Paint and/or Lead-Based Paint hazards or a statement that there is no knowledge, and if there is knowledge, to provide copies of additional information, such as reports that were the basis for the determination that known Lead-Based Paint and/or Lead-Based Paint hazards exist).

F. Compliance with the Renovation, Repair and Painting Rule:

1. Provide a listing of all Your contracts and Work Orders for repairs or Renovations of *Target Housing* properties in New England from **November 1, 2011 to the present**, including common areas, but excluding the following:
 - a. Minor Repair and Maintenance activities that disrupt 6 square feet or less of an interior painted surface or 20 square feet or less of an exterior painted surface (these thresholds do not apply to window replacement);
 - b. Emergency Renovation Operations;
 - c. Any work that is an Abatement project within the meaning of 40 C.F.R. § 745.223 or a "Deleading Project or Work" within the meaning of 454 CMR 22.02;
 - d. Repairs or Renovations in Target Housing or its components in which a written determination has been made by a certified inspector that the components affected by the Renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight, where the renovator has obtained a copy of the determination;
 - e. Repairs or Renovations in housing that is a zero-bedroom dwelling (studio

- apartments, dormitories, etc.); and
- f. Repairs or renovations in housing for the elderly and disabled AND children are not expected to reside there.
2. Provide a listing of all Your contracts and Work Orders for Renovations of *Child-Occupied Facilities* in New England from **November 1, 2011 to the present**.
 3. Please indicate if there were no repairs or Renovations from **November 1, 2011 to the present** subject to the Renovation, Repair and Painting Rule.
 4. Please describe any repairs or Renovations that took place from **November 1, 2011 to the present** that were subject to the Renovation, Repair and Painting Rule, but for which no Work Orders or contracts are available.
 5. For each of the contracts, Work Orders and Renovations referenced in response to questions F.1 through F.4:
 - a. Provide a list of all individuals and firms who performed or managed the Renovation, whether in-house staff or contractors. Include contact information including name, business relationship with You, contractor license number (if known), place of employment, address and phone number, and all lead certification/ license information including copies of such certifications/licenses;
 - b. For Renovations conducted in Target Housing, indicate whether there were any children living in the Target Housing, and if so, their ages at the time of the Renovation;
 - c. Provide any information available to you concerning children with elevated blood lead levels present at the Target Housing or Child Occupied Facility at the time of the Renovation Activity; and
 - d. Provide any lead risk assessments, inspection reports, and/or Letters of Compliance or Conformance You have related to the Target Housing or Child-Occupied Facility.
 6. If any repairs or Renovations described in your response to question F.1 or F.4 were performed by You or Your employees, describe any training and provide copies of any certification/license You and the employees have received regarding lead-safe work practices.
 7. Describe whether and how You currently communicate the requirements of the Disclosure and Renovation, Repair and Painting Rules to all of Your employees and associated businesses, agents, and representatives.
 8. Provide copies of any standard operating procedures, guidance documents, training documents, and/or directives that You use at present to promote compliance with these Rules.

III. CLAIMS OF CONFIDENTIAL BUSINESS INFORMATION

Pursuant to the regulations set forth at 40 C.F.R. Part 2, Subpart B, You may choose to assert that part or all of the submitted information is "confidential business information" ("CBI"). Unless such confidentiality claims are asserted at the time the required information is submitted, EPA makes this information available to the public upon request without further notice to You. Information that is CBI may be made available to the public only to the extent set forth in the above cited regulations. Any such claim for confidentiality must conform to the requirements set forth with 40 C.F.R. § 2.203(b).

While You may claim that information is CBI, such claims are unlikely to be upheld if they are challenged unless the information meets all four of the following criteria:

1. Your business has taken reasonable measures to protect the confidentiality of the information and intends to continue to take such measures.
2. The information is not, and has not been, reasonably obtainable without Your business' consent by other persons (other than government bodies) by use of legitimate means (other than discovery based on showing of special need in a judicial or quasi-judicial proceeding).
3. No statute specifically requires disclosure of the information, and the information is not available elsewhere.
4. Disclosure of the information is likely to cause substantial harm to Your business' competitive position.

The burden of proof is on You to demonstrate that the information satisfies all four criteria. If any portion of Your response contains CBI which You claim as confidential, it is critical that You submit two copies of any such "business information" in accordance with the following procedures:

1. The first copy of any page containing such "confidential business information" must be complete and contain all information. Additionally, each such page must be marked conspicuously to indicate that it is claimed as confidential. Furthermore, the compilation of information subject to Your CBI claim should be mailed to EPA-New England in accordance with the following procedures:
 - a. All such documents must be placed in an envelope addressed to:
Rose Toscano
U.S. Environmental Protection Agency - New England
Office of Environmental Stewardship
5 Post Office Square, Suite 100 (OES 05-4)
Boston, MA 02109-3912

This envelope should be marked "Confidential - To be Opened By Addressee Only"; and

- b. The envelope containing the information claimed as business confidential should then be placed in a second, "outer" envelope, also addressed to Rose

Toscano at the address indicated above. The outer envelope should not be marked with any indication that it contains confidential information.

2. The second copy of any document that is subject to a CBI claim must only contain information which is not claimed as confidential. This second copy of any document from which alleged CBI has been made unreadable, or otherwise removed; must be mailed directly to Ronnie Levin, at the address indicated in Section II above.

If you have any questions concerning this subpoena, please contact Ronnie Levin at: (617) 918-1716.

Issued in Boston, Massachusetts the 5th day of March, 2013.

Susan Studien
Susan Studien, Director
Office of Environmental Stewardship
U. S. EPA New England

Enclosures

1. Affidavit (to be completed and returned with the Subpoena response)
2. Compliance Assistance packet with information about the Disclosure and Renovation, Repair, and Painting Rules; EPA pamphlets; and the Small Business Form

cc. Mr. Brian Wong, MA Department of Labor Standards

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 1 / NEW ENGLAND
TSCA Subpoena No.: TSCA-SP-2013-003**

IN THE MATTER OF:

Richard Rawson
33 Scenic Drive
Worcester, MA 01620

AFFIDAVIT responding to the subpoena issued pursuant to 15 U.S.C. § 2610(c)

I, the undersigned affiant, first being duly sworn, upon an oath, depose and say:

1. Attached are _____ pages of responsive documents and/or records. The attached pages are true and correct copies of documents and/or records that I presently have in my custody and/or control as an agent.
2. I am one of the custodians of the documents and records at issue and am producing true and correct copies of such documents and records in response to a subpoena issued by the U.S. Environmental Protection Agency pursuant to 15 U.S.C. § 2610(c).
3. The documents and records at issue were and/or are received and/or kept in the usual course of the regularly conducted business activities of the persons and entities subject to the above-referenced subpoena. I, and others, rely on such documents and records for the purpose of conducting everyday affairs. Such documents and records are usually prepared, or received, at or near the time of the events to which they related, and are based upon the knowledge of the person transmitting information for the purpose of preparing such documents and records.
4. I have made a diligent search and inquiry for all documents and records that are reasonably described in the subpoena to which this affidavit responds. To my knowledge, there are no documents or records responsive to the subpoena that have not been copied and submitted to the U.S. Environmental Protection Agency.
5. All responses to the inquiries contained in the aforementioned subpoena are true, complete, and accurate.

6. I acknowledge that this affidavit is submitted to the United States in connection with a matter within the jurisdiction of the U.S. Environmental Protection Agency and that any material false statement of fact herein may be a federal crime under Title 18, Section 1001 of the United States Code.

Affiant:

Date: _____ Signature: _____

Type Name: _____ Office or Title: _____

Notary:

Date: _____ Signature: _____

Type Name: _____ Office or Title: _____

SWORN AND SUBSCRIBED TO before me; the undersigned Notary Public on this ____ day of _____, 2013.

Notary Public in and for the State or Territory
of _____ residing at _____